

Internal Revenue Service

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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-102470-10

Date:

June 28, 2010

X =

State =

Trust 1 =

Trust 2

Trust 3

Trust 4

Trust 5

Trust 6

Trust 7

Trust 8

Trust 9

Trust 10

Trust 11

Trust 12

Trust 13

Trust 14

D1 =
D2 =
D3 =
D4 =
D5 =
D6 =

Dear :

This responds to a letter dated January 15, 2010, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on D1 and made an election to be treated as an S corporation effective D2. On D3, a shareholder of X transferred shares of X stock to Trust 1, Trust 2, Trust 3, and Trust 4. Trust 1, Trust 2, Trust 3, and Trust 4 are represented as being eligible to be electing small business trusts (ESBT) as of D3. However, the trustees of the trusts failed to make ESBT elections for each trust. X's S corporation election terminated on D3.

Additionally, shareholders of X transferred shares of X stock to Trust 5, Trust 6, Trust 7, Trust 8, and Trust 9 on D4, to Trust 10, Trust 11, and Trust 12 on D5, and to Trust 13 and Trust 14 on D6. Each trust is represented as being eligible to be an ESBT as of D4, D5, and D6, respectively.

X and its shareholders have consistently treated each trust as an ESBT from the date the shareholders transferred shares of X stock to the trusts.

X represents that the failure to file the ESBT elections for each trust was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(2)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a PCB, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust. Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1362(d)(2) provides that (A) in general, an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents; and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the

corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D3 and that the termination was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D3 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). Trust 1, Trust 2, Trust 3, and Trust 4 will be treated as ESBTs from D3 and thereafter. Trust 5, Trust 6, Trust 7, Trust 8, and Trust 9 will be treated as ESBTs from D4 and thereafter. Trust 10, Trust 11, and Trust 12 will be treated as ESBTs from D5 and thereafter. Trust 13 and Trust 14 will be treated as ESBTs from D6 and thereafter. The shareholders of X must include their pro-rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

This ruling is conditioned upon (1) the trustees of the trusts filing appropriately completed ESBT elections effective D3, D4, D5, and D6; and (2) the trusts, the beneficiaries of the trusts, and any other affected shareholders of X filing any amended returns necessary to conform to this letter with the appropriate service center within 120 days following the date of this letter. A copy of this letter should be attached to each ESBT election.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. In particular, we express no opinion on whether the trusts are otherwise eligible to be ESBTs.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Charlotte Chyr
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes